IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2742 OF 2002

Shri Buvaji Shamrao Kamble. Petitioner

Vs.

Smt.Krishnabai,
Mother of Akubai Bairagi. Respondent

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Ms Anjali N.Helekar for the petitioner.

Shri Shetye for Ms Priyanka Patil for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 19th OCTOBER, 2004.

P.C.

1. Heard the learned advocates for the parties. The petitioner challenges the concurrent findings arrived at by the Courts below on the point of failure on the part of the petitioner to prove that the petitioner was not the defaulter in payment of rent. The sole ground on which the impugned order is sought to be challenged is the failure on the part of the appellate Court to consider the documentary evidence in the form of receipts discloding the payment of rent and that the petitioner was not the defaulter. It is

true that there are certain documents on record which disclose the payment of rent, however, it is not correct to state that those documents were not considered by the lower appellate Court. In fact, the lower appellate Court, after considering all those rent receipts even though they were not produced before the trial Court and were sought to be produced only after the disposal of the matter in the trial Court, has held that the amounts disclosed from the rent receipts did not disclose the total amount of arrears of rent having been paid by the petitioner, within the time and prior to the disposal of the appeal. In other words, not only that the petitioner had failed to pay the rent due and payable to the respondent but, even as far as the quantum of payment of arrears of rent is concerned, had also failed to disclose how much amount he fell short of the arrears which was required to be paid by the petitioner. Apparently, therefore, the findings regarding failure to discharge the burden in respect of the payment of rent and secondly that the respondent having established the case that the petitioner was defaulter in payment of rent, cannot be found fault with as the same are borne out from the records. As no other point is challenged, there is no case for interference

in the impugned order and hence the petition is liable to be dismissed.

2. On oral request by the learned advocate for the petitioner, the execution of the impugned order shall stand stayed till 28th February, 2005 subject to the petitioner and all major members of the petitioner's family in occupation of the suit premises furnishing usual undertaking before the Registrar (Judl.) of this Court within a period of three weeks from today to the effect that the petitioner shall deliver vacant and peaceful possession of the suit premises to the respondent on or before the 28th February, 2005 and meanwhile he shall not party with the possession nor shall create any third party interest nor shall induct any third party in the suit premises. In case, the petitioner fails to file aforesaid undertaking within three weeks, the extension granted for delivering the possession of the suit premises by this Court shall automatically stand cancelled without being referred to the Court.

3. The petition is accordingly dismissed in above terms with no order as to costs.